FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1269 OF 2006

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Prakash Naik for the applicant.

Mr.A.S.Shitole APP for the State.

Coram : R.S.Mohite,J

Date : 4th April, 2006.

PC

1. This is an application impugning an order dated 11.7.2005 passed by the Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai, allowing an application made by the original complainant for recall. It appears that the complainant led his examination by filing an affidavit in which he stated that he has received the bank memo relating to dis-honour of cheque on 28.7.1999. In his cross-examination he admitted that he has received the memo on 23.7.1999. Later on an

application is made on behalf of the complainant on the ground that there is an ambiguity in the dates relating to the return back of the bank memo. By the impugned order the trial Court allowed this application. It appears from the application that for recall as well as from the impugned order the exact purpose of recall has not been mentioned. The complainant has a right under Section 138 of the Indian Evidence Act to re-examine the witness for the purpose of obtaining an explanation of the matters referred to in the cross-examination and if new material is introduced in any such examination by the permission of the Court, the adverse party has a right to further cross-examine on such new material. In my view, application can be dispsoed of with the direction that the re-call be for the purpose of re-examination and if the Court

feels it necessary to allow the introduction of a new material, then the applicant will have a right to cross-examination. It was sought to be argued that recall will remove the ambiguity. In my view ambiguity in the earlier evidence is not entirely wiped out merely because an opportunity to lead further evidence by way of re-examination is given. The veracity of the witness will have to be determined by the Court after taking the evidence as a whole at the conclusion of the trial. Subject to these observations, application stands dismissed.

(R.S.Mohite,J)